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NO. 19273

# Supreme Court of the United States

WEBER ELECTRIC COMPANY,
*Petitioner,*

*vs.*

E. H. FREEMAN ELECTRIC COMPANY,
*Respondent.*

# PETITION FOR WRIT OF CERTIORARI and BRIEF FOR PETITIONER.

CHARLES NEAVE,
FRANK C. CURTIS,
*Counsel for Petitioner.*

Henry Stowell & Son, Printers, 14 First Street, Troy, N. Y.

SUPREME COURT OF THE UNITED STATES.

WEBER ELECTRIC COMPANY,
*Petitioner,*

*vs.*

E. H. FREEMAN ELECTRIC COMPANY,
*Respondent.*

**PETITION FOR WRIT OF CERTIORARI DIRECTED TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.**

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Your petitioner, Weber Electric Company respectfully shows:

FIRST: That your petitioner on the 27th day of April, 1909, filed its bill of complaint in the United States District Court for the District of New Jersey against E. H. Freeman Electric Company, for infringement of U. S. Letters Patent No. 743,206 (Record p. 440); that said cause came on to be heard July 13, 1916, before Honorable J. War-

and means attached to said sight for keeping the same normally in collapsed condition and for imparting a rotary motion to one of said tubes when the focus is changed.

12. A telescopic sight for rifles and other weapons, comprising outer and inner tubes, a helical spring attached to one of said tubes normally tending to collapse the sight and connecting means between the two tubes constructed to give a rotary motion to one of them when the focus is changed.

13. A telescopic sight for rifles and other weapons, comprising outer and inner tubes, means attached to said sight for keeping the same normally in collapsed condition, a helical guide on one of said tubes and means on the other tube for engaging said guide whereby a rotary motion is imparted to one of said tubes when the focus is changed.

14. The combination with a rifle or other weapon, provided with a projecting pin and a groove, the sides of which are formed by striking circles with said pin as a center, of a telescopic sight provided with a sleeve and a plate adapted respectively to pivot on said pin and slide in said groove, and means for locking said sight when so mounted in any desired angular position.

15. The combination with a rifle or other weapon, of a telescopic sight, means for connecting the two comprising a plate mounted on the rifle provided with a horizontally-arranged pivot-pin and a vertically-arranged groove, the sides of which are formed by striking circles with said pin as a center, a sleeve on said sight constructed to fit on said pin, and a plate on said sight adapted to slide in said groove and means for locking said sight when so connected in any desired angular position.

16. The combination with a rifle or other weapon, of a telescopic sight, means for connecting the two comprising a plate mounted on the rifle provided with a pivot-pin and a groove, the sides of which are formed by striking circles with said pin as a center, a sleeve on said sight constructed to fit on said pin, and a plate on said sight adapted to slide in said groove, and means for locking said sight in any angular position when so connected comprising a screw on said plate adapted to engage a threaded socket on said sight.

In testimony whereof I affix my signature in presence of two witnesses.

WM. YOULTEN.

Witnesses:
A. E. VIDAL,
A. BROWNE.

ren Davis, District Judge, who on November 6, 1918, handed down an opinion holding claims 2 and 3 of said patent invalid, and holding claims 1 and 4 of said patent valid and infringed by incandescent electric lamp sockets of the type hereinafter referred to as Freeman sockets. An Interlocutory Decree was thereafter entered in accordance with said opinion from which decree the defendant, E. H. Freeman Electric Company appealed as to said claims 1 and 4, and your petitioner appealed as to claims 2 and 3. Said appeals came on to be heard by the U. S. Circuit Court of Appeals for the Third Circuit on April 1 and 2, 1919; and August 13, 1919, said Court of Appeals handed down an opinion sustaining the decree of the District Court as to claims 2 and 3 and reversing said decree as to claims 1 and 4, holding each of said claims 1 and 4, by reason of the expression "telescopically applied to each other," to be limited and restricted to a straight longitudinal movement in telescopically assembling and locking together the cap and sleeve members, and holding said claims not infringed by the Freeman socket which requires a slight rotational movement as well as straight longitudinal movement in assembling and locking together the cap and sleeve members.

The decision of the Circuit Court of Appeals for the Third Circuit as to claims 1 and 4 is believed to be erroneous, unfair, and unwarranted by and contrary to the law and the facts; and petitioner prays for review of said decision as to claims 1 and 4.

SECOND: Said patent No. 743,206, has been in constant litigation in suits in various districts against various other defendants since the beginning of the suit against said E. H. Freeman Electric Company; and in every other such litigation said claim 4 has been held valid and infringed; and in every other such litigation in which claim 1 was in issue, it also has been held valid and infringed.

Such other litigations comprise suits by this petitioner against the following defendants:

*National Gas & Electric Fixture Company*, Southern District of New York, in which each of claims 1 and 4 were held valid and infringed by two forms of the defendant's Union socket there in evidence. This decision was affirmed by the Second Circuit Court of Appeals.

*Union Electric Company*, District of New Jersey, in which each of claims 1 and 4 was held valid and infringed by the same two types of Union socket as those in the National Gas Case; and on a first supplemental bill and a second supplemental bill claim 4 was held valid and infringed by two later forms of the Union socket there in evidence.

*Wirt Manufacturing Company*, District of Massachusetts, in which claims 1 and 4 were held valid and infringed by the Wirt socket.

*The Cutler-Hammer Manufacturing Company*, Southern District of New York, in which claims 1 and 4 were held valid and infringed by the Cutler-Hammer socket. This decision was affirmed by the Second Circuit Court of Appeals.

*The Connecticut Electric Manufacturing Company*, District of Connecticut, in which claim 4 was held valid and infringed by the Connecticut socket, *which has the same rotational feature as the Freeman socket*. This decision was affirmed by the Second Circuit Court of Appeals which, after comparing the Connecticut socket with the Freeman socket, stated:

> "These reasons compel us to think the order appealed from right and regretfully to differ from the views regarding scope and interpretation of these claims expressed in the recent opinion of our sister Court in the Third Circuit respecting the Freeman device."

*W. R. Ostrander & Co.*, Southern District of New York, in which claims 1 and 4 were held valid and infringed by the Ostrander socket which has the same rotational feature as the Freeman socket and the Connecticut socket.

Petitioner submits herewith printed bound copies of the *Court Opinions* rendered by the different Courts in these various litigations, some of which have not appeared in the Federal Reporter.

Of the sockets which have been held to infringe these claims 1 and 4, the Connecticut socket and

the Ostrander socket, like the Freeman socket, require a slight rotational component in the movement whereby the cap and sleeve are telescopically assembled and locked together; while *none of the others* had any means whereby the movement in telescopically assembling and locking together the cap and the sleeve *was limited or restricted to a straight longitudinal movement* along the axis of the case-members, but they could just as readily, if not more readily, be assembled and locked by a movement having a rotational component as they could by a straight longitudinal movement; and in fact it was necessary to use much care in alining the catch projections with the recesses to be engaged thereby in order to employ the straight longitudinal movement only.

THIRD: The hearing of the National Gas Case by the Second Circuit Court of Appeals was upon appeal from an Interlocutory Decree after final hearing in the District Court, which decree was made final after the affirmance by the Court of Appeals.

The hearing of the Cutler-Hammer case by the Second Circuit Court of Appeals was on appeal from an order granting a preliminary injunction; but after affirmance by the Court of Appeals, the record on appeal was by stipulation treated as a final record and the hearing on the motion as a final hearing, and a final decree was entered in accordance with the decision of the Court of Appeals.

The hearing of the Connecticut case by the Second Circuit Court of Appeals was on an order granting a preliminary injunction; but the Court in its opinion said (Court Opinions, p. 117):

> "Infringement is the only question, it being admitted that as records of former suits are in evidence as exhibits,—evidence is exhausted *and the matter may be considered as on final hearing.*"

FOURTH: That in the Cutler-Hammer case there were before the District Court and the Court of Appeals the records of the National Gas Case, the Union Case and the Freeman Case; and in the Connecticut Case there were before the District Court and the Court of Appeals all of said records as well as the Cutler-Hammer record, and the petition for rehearing in the Freeman case then pending before the Third Circuit Court of Appeals; and in the Freeman case there were before the District Court and the Third Circuit Court of Appeals, Judge Rellstab's two unreported decisions in the Union case (Court Opinions, p. 55 and p. 60), while the Court of Appeals also had before it the Record and Briefs on appeal in the Cutler-Hammer case, and the opinion of District Judge Thomas in the Connecticut case, and a Connecticut socket.

FIFTH: That in the Cutler-Hammer case District Judge A. N. Hand in his opinion (Court Opinions, page 65) made certain *obiter* remarks which are quoted in the opinion of the Third Cir-

cuit Court of Appeals. Counsel for petitioner, then appellee in the Cutler-Hammer case, called attention to these statements of Judge Hand in their brief as follows:

> "While this difference between a straight axial telescopic movement and a bayonet movement, (or a telescopic movement having a rotational component) is not in issue in the present case, we wish in view of some *obiter* remarks in the opinions of Judge Rellstab, and of Judge Augustus N. Hand in the present case, to bring to the attention to this Court of Appeals, the fact that the only case in which this feature of the bayonet-movement was in issue and was contested and argued was the Freeman case, in which Judge Davis has held claim 4 not limited to any particular movement.

In the present case, Judge Augustus N. Hand, while showing by his opinion that he fully appreciated the vital distinction between the Weber and the Kenney patents in that Weber was the pioneer with a socket which was "automatically locked," "and held from disengagement by *either* longitudinal pull or rotation *without manual compression of the sleeve*," uses language, *obiter*, which might be construed as expressing a casual view that this rotational feature was a substantial difference, instead of a mere literal difference in the preferred manner of operation as is clearly the case. While these casual expressions of Judge Hand are utterly without significance in this case they might be referred to in some other case, the Freeman case for example, to the detriment of the plaintiff as suggesting a limitation on the patent which clearly does not exist. Judge Rellstab as a mere matter of description used substantially the same language, also *obiter* and where the point was of

no significance, in his opinion reported 226 Fed. 485.

> The statement in the opinion in the Freeman case, of Judge Davis, who was in close touch with Judge Rellstab and who was called upon to decide the precise point as at the very basis of the controversy in the Freeman case before him, that the matter quoted by Judge Hand from Judge Rellstab's opinion was merely a description of the operations specifically described in the respective patents and not a limitation of claim 1 in this respect, was borne out by a subsequent unreported opinion of Judge Rellstab at a later hearing, as to which we had not called Judge Hand's attention, because this point was not in issue and was not discussed in this case. In this later opinion Judge Rellstab positively stated that in his earlier opinion he had not passed upon this point because it was not in issue, and that the remarks in this earlier opinion were not a limitation of claim 1 to a straight telescopic movement."
>
> (See Court Decisions, page 601).

With the rotational feature *and the Freeman case itself* thus called to the attention of the Second Circuit Court of Appeals, that Court in its opinion, after citing the decision of District Judge Davis holding the Freeman socket to infringe claims 1 and 4, held the Weber invention to be, "a positive lock for the engagement of the sleeve and cap of lamp sockets as distinguished from *any and every* variety of friction device;" and in the last paragraph of its opinion referred to "the range of equivalents *always* hitherto accorded these patents."

SIXTH: That your petitioner is advised by counsel learned in the law, and believes, that the decision of the U. S. Circuit Court of Appeals for the Third Circuit in the present suit, holding said claims 1 and 4 not infringed by the Freeman socket and ordering the bill dismissed as to these claims, is erroneous and without legal foundation and is not justified by the facts.

SEVENTH: That an accounting is now proceeding before a Master in the Union Case in the District of New Jersey in which much testimony has been introduced and it has been shown that the defendant had realized a large sum as profits from the manufacture and sale of lamp sockets which have been held to infringe said claims 1 and 4; and your petitioner is under much embarrassment in the continuance of said accounting due to the bearing which the erroneous decision of the Third Circuit Court of Appeals in the present case may have upon the application of the law to the facts in said accounting.

That petitioner has received and is receiving large sums as royalty for the manufacture and sale by its numerous licensees of lamp sockets licensed under said patent No. 743,206, and claims 1 and 4 thereof, and which have always heretofore been understood and believed by petitioner and its said licensees to come within the scope of said claims 1 and 4.

Petitioner is therefore greatly embarrassed by this regretable disagreement between the U. S.

Circuit Court of Appeals for the Third Circuit and the U. S. Circuit Court of Appeals for the Second Circuit in interpreting and determining the scope of these claims 1 and 4, which paves the way for similar disagreements between petitioner and its licensees and litigation with respect thereto.

EIGHTH: That the word "telescopic" (or "telescopically") has been commonly used in various arts, and particularly in the lamp socket art, in its ordinary meaning as describing the sliding *or working* of one part within another without limitation as to direction of movement; it is so used in practically every modern dictionary; and it has been so used as shown in the petition for rehearing in at least four different arts in the Patent Office, as well as to describe the twisting and progressive movement whereby the parts of the ordinary hand telescope or spy glass are opened and closed; and that the Court of Appeals for the Third Circuit by its decision here complained of has stamped with judicial approval and authority a *false definition* of the word "telescopically" for which there is no basis in law or in fact and which will tend to endless confusion and uncertainty as to the meaning of this word in its various forms in the various arts in which it is used.

NINTH: Wherefore, in view of the premises, your petitioner prays that this Honorable Court will grant its writ of certiorari directed to the

U. S. Circuit Court of Appeals for the Third Circuit requiring that the record in this cause in the said Court and its decrees therein be certified to this Court, and that this Honorable Court will proceed to correct the errors complained of, reverse the said decrees as to claims I and 1, and remand the said case, and give to your petitioner such other and further relief as the nature of the case may require and to the Court may seem proper in the premises.

WEBER ELECTRIC COMPANY,
By A. WEBER, JR., *President*.

STATE OF NEW YORK, }
County of Schenectady. } ss.:

Before me the undersigned, a Notary Public in and for said State and County, personally appeared A. Weber, Jr., President of Weber Electric Company the above-named petitioner, who having been duly sworn did depose and say that the matters stated in the foregoing petition for writ of certiorari are true except as to those therein stated to be on information and belief and as to such statements he believes the same to be true.

A. WEBER, JR.

Subscribed and sworn to before me this 9th day of March, 1920.

L. S. C. W. BRADSHAW,
Notary Public.

We hereby certify that we have examined the foregoing petition and that in our opinion the petition is well founded as to matters of fact and as to matters of law, and that the prayer of the petition should be granted.

CHARLES NEAVE.
FRANK C. CURTIS.

# SUPREME COURT OF THE UNITED STATES.

WEBER ELECTRIC COMPANY,
*Petitioner,*

*vs.*

E. H. FREEMAN ELECTRIC COMPANY,
*Respondent.*

## BRIEF FOR PETITIONER.

The petition presents but a single question of law, viz:

Is a device, which in all other respects embodies the subject-matter and invention of claims 1 and 4 of Weber patent 743,206, brought outside the scope of said claims by reason of a slight rotational component in the movement whereby the sleeve and cap of the device are telescopically assembled and automatically interlocked.

Or in other words, are these two claims by reason of the word "telescopically" which appears therein limited and restricted to a straight longitudinal movement only, in telescopically assembling and interlocking the sleeve and the cap.

The Third Circuit Court of Appeals in the Free-

man case has held these claims so limited and restricted, and that the Freeman socket therefore does not infringe said claims.

The Second Circuit Court of Appeals in the companion Connecticut Case has held directly to the contrary; and, finding that the Connecticut socket "is an improved and simplified form of Freeman's device," and after reviewing the decision of the Third Circuit Court of Appeals in the Freeman case, concludes,

> "These reasons compel us to think the order appealed from right and regretfully to differ from the views regarding scope and interpretation of these claims expressed in the recent judgment of our sister Court in the Third Circuit Court of Appeals respecting the Freeman device."

Each of said Circuit Courts of Appeals had before it the same facts in reaching these differing conclusions of law.

The Third Circuit Court of Appeals had before it in the present case the record, briefs and the opinion of the Second Circuit Court of Appeals in the Cutler Hammer case in which that Court after citing with approval the decision of Judge Davis in the Freeman case, held that "the Weber invention is a positive lock for the engagement of the sleeve and cap of lamp sockets as distinguished from *any and every* variety of friction device," which opinion was rendered after the attention of the Court had been particularly called to the feature of the rotational movement in the Freeman socket and to the *obiter* statement which had been

made by Judge A. N. Hand in his opinion in the Cutler-Hammer case, which statement is quoted in the opinion of the Third Circuit Court of Appeals in the Freeman case. (See Petition, paragraph Fifth). The Third Circuit Court of Appeals also had before it (although Judge Morris' opinion would indicate otherwise) the Connecticut socket and the opinion of Judge Thomas in the Connecticut case which was thereafter affirmed by the Second Circuit Court of Appeals.

The Second Circuit Court of Appeals had before it in the Connecticut case the Freeman socket, the whole Freeman record, the decision of the Third Circuit Court of Appeals, here complained of, reversing Judge Davis on this point of rotational movement, the petition for rehearing in the Freeman case, and the information that the petition had been refused without opinion by the Third Circuit Court of Appeals.

The rotational feature was thus first considered by the Second Circuit Court of Appeals in the Cutler-Hammer case.

The rotational feature did not enter into the question of infringement with respect to the Cutler-Hammer socket; but in discussing the Weber invention in connection with the prior Kenney U. S. patents Nos. 712,685 and 712,686, which were telescopically assembled and locked, *not positively but frictionally*, by a movement having a rotational component, Judge A. N. Hand made certain *obiter* statements which are quoted in the opinion of Judge Morris in the Third Circuit Court of Appeals in the Freeman case, as expressing a limitation of

the Weber invention to a straight longitudinal telescopic movement as distinguished from a movement having a rotational component.

On the appeal in the Cutler-Hammer case this same statement of Judge Hand was, in the brief of the present petitioner, called particularly to the attention of the Second Circuit Court of Appeals. (See Petition, par. Fifth).

The Second Circuit Court of Appeals thereupon rendered its opinion in which, after citing the decision of Judge Davis in the Freeman case, the Court states that the Weber invention "is a positive lock for the engagement of the sleeve and cap of lamp sockets as distinguished from *any and every* variety of friction device;" and in concluding its opinion referred to "the range of equivalents *always* hitherto accorded these patents."

The opinion of the Second Circuit Court of Appeals in the Connecticut case (Court Opinions, page 117) is we believe free from error, and correctly expresses the law, and correctly interprets the scope of said claims 1 and 4.

In the proceedings in the Patent Office, no amendment or argument was ever presented with respect to claim 1; and no amendment or argument was ever presented with respect to the word or expression "telescopically," which appears in claim 4, although an amendment was made to claim 4, accompanied by an argument, with respect to certain characteristics of the catch-projection; but the Courts have uniformly held that these amendments to claim 4 were not such limitations as deprive the claim of a fair range of equivalents for even these

characteristics of the catch-projection; and the Third Circuit Court of Appeals in the Freeman case cited all of these prior decisions and took no exception to them.

The feature as to which the Third Circuit Court of Appeals puts the most drastic limitation upon these claims is the telescopic feature *as to which neither claim was ever amended.*

The Third Circuit Court of Appeals holds that the word "telescopically" in claim 4, is restricted in meaning to a "straight longitudinal motion along the axial line of the two members of the socket."

Judge Morris who wrote the opinion holds that this restricted meaning is imposed upon the word "telescopically" by:—

(a) The prior art.

(b) The file-wrapper and contents of the patent.

(c) Weber's later patent No. 916,812.

(d) By the dictionaries.

(e) By Judge Rellstab in the Union case, 226 Fed. 482 (Court Opinions, Page 41), as well as by Judge Ray in the original National Gas decision.

(f) By Judge A. N. Hand and the Second Circuit Court of Appeals in the Cutler-Hammer decisions.

We believed that in the petition for rehearing we had so clearly pointed out the facts which Judge Morris had overlooked and the errors into which he had fallen, that the Court would be constrained to grant the rehearing; but the Court merely refused the rehearing without argument and without even

correcting misstatements of fact which are too clear for argument.

As this Court will doubtless examine the petition for rehearing which appears at page 723 of the record, we shall not here incorporate our presentation of the matter at large, but merely summarize briefly the errors in Judge Morris' opinion as to the meaning of the word "telescopically" as follows:—

(a) There is nothing in the prior art which requires Weber's invention to be limited to a straight longitudinal telescoping movement. This movement and the bayonet telescopic movement were both old in the art in lamp sockets, the straight movement being shown in the Oetting patent (p. 618), and Rodman patent (p. 582) and the bayonet movement in the British Kenny (p. 656), U. S. Kenney (pp. 636-640), Wirt (p. 604), and in the Lange-type socket. So far as Weber's invention is concerned they were equivalent movements in the art.

**But Weber in the patent itself and by reference to the prior art has made his own definition for the word "telescopically."**

At line 35, page 1, of the patent, he defines not what his invention is, but what it is applicable to, and he says:—

> "My invention is applicable to various telescopically connecting members, but is especially adapted for use in the *telescopically connecting* cap and sleeve members of incandescent electric lamp sockets."

The evidence in all these cases shows and is undisputed that for about nine years prior to Weber's

invention practically the only socket on the market was the Lange-type socket with its bayonet movement; and it is this bayonet-movement socket to which Weber referred as "the telescopically connecting cap and sleeve members of incandescent electric lamp sockets," to which his invention was applicable.

**In thus describing the old bayonet-form of connection as "telescopically" connecting, Weber has in terms defined that word in such manner as to include the Freeman socket and the Connecticut socket.**

Weber's invention was not in the direction of movement, because neither the straight telescoping movement nor the bayonet telescoping movement was new with Weber. The invention was in the thing which was accomplished by merely moving the sleeve and cap over each other, which thing was a positive lock.

In Oetting, movement of the parts over each other, *no matter in what direction*, could not alone effect a positive locking; that movement had to be supplemented by manual pressure upon the locking tongues. Nor would the movement of the parts over one another, no matter how moved, in the Kenney structure effect the *positive* locking, for in that instance there was frictional engagement only and nothing positive at all about the locking.

Weber by mere movement of the parts over each other obtained a positive lock as distinguished from Kenney and without manipulation of the catches

as distinguished from Oetting, the direction of movement having nothing to do with it.

(b) In the petition for rehearing, we quite fully discussed Judge Morris' errors in interpreting the file wrapper. We here call attention to one only of these, which is so clear as to require no argument. Judge Morris says as to the Oetting construction, "He (Weber) states the parts cannot be locked together by simple telescopic movement, it being necessary to manually depress the catches." Judge Morris then proceeds to interpret the word "simple" in this quotation, and throughout the file wrapper to mean "*straight*." It needs no argument to show that if "simple" meant "*straight*" in this quotation referring to the Oetting patent, the statement would be untrue, because in Oetting the parts *can* be assembled by a straight telescopic movement when the catches have been depressed by the hand.

The words "simple" and "simply" throughout the file wrapper are used merely in contrasting, first, the automatic feature of the Weber lock as distinguished from the deliberate pressing in of tongues by hand in the Oetting patent; and secondly in contrasting the necessity of manual compression of the sleeve to release Weber's positive lock, with the release of the Kenney friction lock by a mere movement of the socket members.

(c) Judge Morris finds in the later Weber patent, No. 916,812 (Record, p. 686), the same word "telescopically" used with reference to a construc-

tion having a guide whereby the parts are confined to a straight longitudinal movement in telescoping together. If statements in a later patent are competent in construing an earlier patent, it seems to us that this later patent has just the opposite bearing to that attributed to it by Judge Morris. In the earlier patent there is not a word with reference to any particular direction of movement. In the later patent the specification states at line 59, page 2:—

> "To *insure the alinement* of said projections and recesses *during telescopic application* to each other of the sleeve and cap" etc.

The earlier patent concededly had no means "to insure the alinement during telescopic application;" and is it not perfectly clear that this feature of the invention of the later patent was to *compel* the parts to move in alinement during telescopic application by means of the guiding mechanism shown in the later patent and forming the subject of a number of claims therein? If the object of the later patent was to *insure* alinement in telescoping, does it not show conclusively that in the earlier patent the parts were not likely to keep their alinement in telescoping, but that even if they did not do so, the movement was nevertheless considered telescopic?

But Weber took out another patent No. 1,136,383 (p. 755), *showing a true bayonet movement*, in claim 2 of which he sets forth,

> "Means for guiding the members *telescopically* together by a *movement having a rotational component*."

Weber thus has himself used the word "telescopically" with reference to a straight movement in the 916,812 patent, and with reference to a bayonet movement in patent No. 1,136,383; and it will be remembered that he also used the word "telescopically" in his patent No. 743,206 in suit in referring to the cap and sleeve members of the prior art socket which also had a bayonet movement. Judge Morris in holding that Weber in his patents had defined the word "telescopically" to mean a straight longitudinal movement only, clearly was not well informed as to the facts.

(d) Judge Morris says with respect to the verb "telescope":—

> "Lexicographers have so uniformly defined this word that the meaning given by one may be accepted as imparting the thought of all."

In the petition for rehearing we show that practically every modern dictionary gives the word "telescopically" a broad definition which includes a telescopic movement having a rotational component, and to this effect we have cited Knight's American Mechanical Dictionary, Standard Dictionary, Universal Dictionary, American Encyclopedic Dictionary, The Century Dictionary, The Imperial Dictionary, Webster's New International Dictionary, The Oxford (Murray's) Dictionary. These definitions are quoted at large in the petition for rehearing. Here Judge Morris was again misled by lack of information. In our petition we supplemented these dictionary definitions by reference to five patents in various arts in

which the word "telescopically" is used with reference to a movement having a rotational component. Two of these patents relate to screw-jacks, one to an incandescent electric lamp socket having a bayonet movement, one to a dental operating chair having a telescoping screw-base, and one to a telescopic sight for rifles in which the telescope is focused by a spiral movement. We also supplemented our petition with an affidavit by Dr. John A. Brashear, probably the foremost authority in this country on the construction and use of the telescope, and an affidavit by Dr. Elihu Thomson each showing the common use of twisting movement in focusing the ordinary spy-glass and fully approving the word "telescopically" in describing the operation of the Freeman socket.

(c) Judge Morris quotes Judge Rellstab in the Union case as authority for this restricted definition of the word "telescopically;" but in a later opinion which was before the Third Circuit Court of Appeals, but which Judge Morris obviously overlooked, Judge Rellstab emphatically denied any intention of so restricting the claim, and explained that in the statement quoted by Judge Morris, he, Judge Rellstab, was merely discussing structures and not interpreting the claim. This later opinion was filed December 10, 1918 (Court Opinions, p. 60). Judge Morris' opinion therefore places Judge Rellstab in a false position; and obviously this was through lack of information as to Judge Rellstab's later statement of the matter. In the same manner Judge Morris has taken Judge Ray's mere descrip-

tion of structures as a limitation of the invention with respect to the word "telescopically," when there was no such question or issue before Judge Ray any more than there was before Judge Rellstab.

(f) As we have before stated, Judge Morris, cites the Second Circuit Court of Appeals in the Cutler-Hammer decision as limiting the word "telescopically" to this straight longitudinal movement. As the Second Circuit Court of Appeals in its opinion in the Connecticut case repudiates this misinterpretation of the opinion which it rendered in the Cutler-Hammer case, there seems nothing more to be said on the subject.

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## CONCLUSION.

We have thus shown beyond question or argument that Judge Morris' opinion misrepresents the facts as to the approval of his interpretation of the word "telescopically" by the Second Circuit Court of Appeals which repudiates this interpretation; as to Judge Rellstab who has denied interpreting the claim in this manner; as to the dictionaries all of which give the broader interpretation of the word as found by the Second Circuit Court of Appeals; as to the Weber patents themselves because in the Weber patent here in suit Weber used the term "telescopically" in this broader meaning in describing the cap and sleeve members of the prior-art bayonet-joint socket as "telescopically connect-

ing;" and in his later patent No. 1,386,383, uses the word "telescopically" in describing a movement having a rotational component; as to the file-wrapper because the word "simple" in the file wrapper cannot mean "*straight*" without falsifying the statement as to the Oetting patent; and as to the prior art because both the straight longitudinal telescopic movement, and the telescopic movement having a rotational component were well known equivalent movements in the prior art, the straight movement being described in the Oetting and Rodman patents and the rotational movement in the Kenney and other patents, and Weber was not the inventor of either of said movements, and Weber's claims were never rejected or amended with respect to the direction of the assembling and locking movement or the word telescopically.

The petition shows in paragraph Third that the decisions of the Second Circuit Court of Appeals in the Cutler-Hammer case and the Connecticut case were in effect decisions on final hearing.

The Second Circuit Court of Appeals and the Third Circuit Court of Appeals are thus in irreconcilable disagreement as to the interpretation of these claims 1 and 4.

The confusion caused by these conflicting decisions, the uncertainty which they entail in the litigation and accounting now proceeding upon this patent and the embarrassment and uncertainty which these conflicting decisions create in the relations between petitioner and its licensees are shown in paragraphs Seventh and Eighth of the petition.

In view of the unquestionable errors of fact and of law in the opinion of the Third Circuit Court of Appeals complained of, and in order that there may be uniformity in the interpretation of claims 1 and 4 of the patent in suit in the several circuits, whereby the rights of petitioner, its licensees, other litigants and the public may be definitely determined, we respectfully invoke for this petition the favorable consideration of the Court.

CHARLES NEAVE,
FRANK C. CURTIS,
Counsel for Petitioners.

March 8, 1920.


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